

**IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
CENTRAL DIVISION**

**UNITED STATES OF AMERICA**

**VS.**

**4:18-CR-00674-02-JM**

**KRISTOPHER MITCHELL**

**ORDER**

Defendant's third motion for clarification (Doc. No. 134) is DENIED.

First, Defendant's jail-credit argument relates to how his sentence is being executed and must be pursued in a § 2241 habeas petition.<sup>1</sup> Second, Defendant's complaint about the constitutionality of § 922(g) as applied to him must be pursued under § 2255. Since Defendant previously filed a § 2255 habeas petition, he must first receive leave from the Eighth Circuit Court of Appeals before he can pursue relief on this issue.<sup>2</sup> Notably, the Eighth Circuit Court of Appeals has already rejected the merits of Defendant's argument.<sup>3</sup> Furthermore, Defendant has felony convictions for second-degree battery and aggravated assault.

IT IS SO ORDERED this 24<sup>th</sup> day of May, 2024.

  
UNITED STATES DISTRICT JUDGE

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<sup>1</sup> *Nichols v. Symmes*, 553 F.3d 647, 649 (8th Cir. 2009) (“[A] claim attacking the execution of that sentence should be brought in a § 2241 petition in the jurisdiction of incarceration.”).

<sup>2</sup> As amended in April 1996 by the Antiterrorism and Effective Death Penalty Act, § 2255 requires that all successive § 2255 motions be certified by the appropriate court of appeals before they are considered by the district courts. See *Boykin v. U.S.*, 242 F.3d 373 (8th Cir. 2000).

<sup>3</sup> *United States v. Jackson*, 69 F.4th 495, 501 (8th Cir. 2023) (holding “that the district court was correct that § 922(g)(1) is not unconstitutional as applied to” a defendant with non-violent felony drug convictions).